UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

RONALD J. OSBUN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CAUSE NO. 1:03-CV-063**
	)	
AUBURN FOUNDRY, INC., and AUBURN FOUNDRY, INC. RETIREMENT INCOME PLAN,	)	
	)	
Defendants.	)	

MEMORANDUM OF DECISION AND ORDER

I. INTRODUCTION

Plaintiff Ronald J. Osbun ("Ronald") brought this suit under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*, alleging that Defendants Auburn Foundry, Inc. ("Auburn") and Auburn Foundry, Inc. Retirement Income Plan ("the Disability Plan") wrongfully terminated his long-term disability benefits.[1] Ronald achieved victory at the liability stage of this litigation, as this Court earlier ruled that the termination of his disability pension was arbitrary and capricious. *Osbun v. Auburn Foundry, Inc.*, 293 F. Supp. 2d 863 (N.D. Ind. 2003). That, it seems, was the easy part, because determination of the proper remedies (and the proper parties to provide them) requires the Court to untangle a complicated knot of legal issues.

Before the Court is Ronald's motion for summary judgment, which sets out seven remedies to which Ronald believes he is entitled. Although Defendants concede that two of

[1]This Court therefore retains subject matter jurisdiction under 28 U.S.C. § 1331. Jurisdiction of the undersigned Magistrate Judge is based on 28 U.S.C. § 636(c), all parties consenting.

these remedies are appropriate, they argue that Ronald failed to sue the only party which can provide the other five. Accordingly, Ronald declined to file a reply brief on his motion for summary judgment, instead filing an extremely belated motion to amend his complaint. After considering the motions and the relevant law, the Court finds that Ronald's motion to amend should be DENIED, that his motion for summary judgment should be GRANTED in part, DENIED in part with prejudice, and DENIED in part without prejudice, and that what remains of the case must be STAYED due to Auburn's pending bankruptcy petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Ronald suffers from a staggering assortment of maladies; this Court previously described him as "a mentally retarded, illiterate, partially blind, partially deaf, arthritic man with arteriosclerotic heart disease, thyroid insufficiency, and high blood pressure." *Osbun*, 293 F. Supp. 2d at 871. In 1990, these infirmities ended Ronald's twenty-year career at Auburn, as a doctor proclaimed him "totally disabled" and unable to engage in any gainful employment. *Id.* at 865-66. Ronald thus became qualified for a disability pension under the Disability Plan. *Id.* at 866.

Auburn also offers medical benefits to employees and retirees via the Auburn Foundry, Inc. Health and Welfare Plan ("Health Plan"). (Third Aff. of Lori A. Wenino ¶ 4 and Ex. A.) Unlike the Disability Plan, the Health Plan is unfunded, meaning that its benefits are paid directly out of Auburn's assets. (*Id.* ¶ 5.) The terms of the Health Plan state that retirees receiving a disability pension from the Disability Plan, as well as their dependents, are automatically eligible to receive medical benefits from the Health Plan. (*Id.* ¶ 4 and Ex. A at 3.1.)

From 1990 to 2001, Ronald and his then-wife Louise Osbun ("Louise") enjoyed both Ronald's disability pension under the Disability Plan and medical benefits under the Health Plan. However, on June 21, 2001, representatives of Auburn and the Disability Plan decided that Ronald was no longer disabled and terminated his disability pension. *Osbun*, 293 F. Supp. 2d at 866. Because Ronald was no longer receiving a disability pension, he and Louise were no longer eligible for the Health Plan's benefits. In the time since, they have amassed considerable medical bills, some of which were covered by Medicare and some of which remain unpaid; they have also been required to pay Medicare premiums. (*See* Aff. of Louise Osbun and supporting materials.)[2]

Ronald brought this suit on February 18, 2003. (*See* Compl.) The complaint names Ronald as the sole plaintiff and Auburn and the Disability Plan as the only defendants; neither Louise nor the Health Plan is a party to the suit. (*See id.*) On April 30, 2003, this Court entered a scheduling order pursuant to Federal Rule of Civil Procedure 16 which, *inter alia*, set June 9, 2003, as the deadline for amendment of the pleadings. (Docket # 14.) None of the parties amended their pleadings by that date.

After receiving cross-motions for summary judgment on the issue of liability, this Court ruled on October 27, 2003, that the decision to terminate Ronald's disability pension was arbitrary and capricious.[3] *Osbun*, 293 F. Supp. 2d at 871. The parties then requested an

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[2]At a recent hearing, Ronald's counsel stated that Ronald and Louise reluctantly obtained a divorce after losing their eligibility for the Health Plan, for the sole purpose of receiving more favorable treatment from Medicare. Nonetheless, they still "consider" themselves married. (Louise Osbun Aff. ¶ 2.) This twist in the story, while unusual, does not materially affect the legal issues framed by the present motions.

[3]At that stage, the Court did not differentiate between the two defendants, but referred to them collectively as "Auburn." *Osbun*, 293 F. Supp. 2d at 865.

opportunity to settle on the question of Ronald's relief, so the Court held a series of status conferences to monitor the progress of the settlement discussions. (Docket # 35, 36, 39, 43.)

While the parties were still attempting to settle the case, Auburn filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Northern District of Indiana. Auburn alerted this Court to its petition by filing a "Suggestion of Bankruptcy" on March 1, 2004. (Docket # 42.) Shortly thereafter, it became apparent that the parties would not be able to settle, and the instant motions followed.

III. DISCUSSION

A. Ronald's Motion to Amend

A party may amend its pleading once as a matter of course at any time before a responsive pleading is served; otherwise, it may amend only by leave of the court or by written consent of the adverse party. Fed. R. Civ. P. 15(a). Leave to amend is freely given when justice so requires. *Id.* However, this right is not absolute, *Brunt v. Serv. Employees Int'l Union*, 284 F.3d 715, 720 (7th Cir. 2002), and can be denied for undue delay, bad faith, dilatory motive, prejudice, or futility, *Ind. Funeral Dir. Ins. Trust v. Trustmark Ins. Corp.*, 347 F.3d 652, 655 (7th Cir. 2003).

Moreover, the requirements of Rule 15 must be read in conjunction with the requirements of Rule 16, because "[o]nce the district court [has] filed a pretrial scheduling order pursuant to [Rule] 16 which establish[es] a time table for amending pleadings that rule's standards [control]." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992); *Kortum v. Raffles Holdings, Ltd.*, 2002 WL 31455994, *3 (N.D. Ill. Oct. 30, 2002); *Tschantz v. McCann*, 160 F.R.D. 568, 570-71 (N.D. Ind. 1995). Rule 16 provides in part:

> (b) [The district court] . . . shall, after receiving the report from the parties under Rule 26(f)[,] . . . enter a scheduling order that limits the time (1) to join other parties and to amend the pleadings; (2) to file and hear motions; and (3) to complete discovery . . . . A schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by the Local Rule, by a magistrate judge.

Fed. R. Civ. P. 16(b). Thus, a party seeking to amend a pleading after the date specified in a scheduling order must first show "good cause" for the amendment under Rule 16(b); then, if good cause is shown, the party must demonstrate that the amendment is proper under Rule 15. *Tschantz*, 160 F.R.D. at 571. "A court's evaluation of good cause is not co-extensive with an inquiry into the propriety of the amendment under . . . Rule 15." *Id.* (quoting *Johnson*, 975 F.2d at 609). Rather, the good cause standard focuses on the diligence of the party seeking the amendment. *Id*. In other words, to demonstrate good cause, a party must show that despite its diligence, the time table could not reasonably have been met. *Id.*

Here, Ronald moves to amend his complaint, in order to (1) add Louise as a plaintiff; and (2) add the Health Plan as a defendant. His motion faces a high hurdle at the outset because the deadline to amend the pleadings passed roughly fourteen months ago. (Docket # 14.)

As to adding Louise, Ronald fails to demonstrate good cause for amendment after the deadline. In fact, he does not even *attempt* to show good cause, as he does not mention Rule 16 nor offer any excuse why he failed to include Louise as a party to this suit. (*See* Mem. of Law in Supp. of Mot. to Amend.) He instead makes a conclusory assertion that adding Louise creates "no harm or prejudice" to the defendants (Pl.'s Reply at 2), but even if true this is clearly insufficient to show good cause, *Tschantz*, 160 F.R.D. at 572; *Amcast. Indus. Corp. v. Detrex Corp.*, 132 F.R.D. 213, 218 (N.D. Ind. 1990); *cf. U.S. v. 1948 South Martin Luther King Drive*, 270 F.3d 1102, 1110 (7th Cir. 2001) (holding that mere lack of delay to trial was insufficient to

show good cause, where there was no convincing excuse for party's tardiness). Moreover, it is hard to imagine how he *could* show good cause; Louise was legally his wife at the time he filed suit, and he still "considers" her his wife now, so he certainly should have known if she suffered losses which could be remedied by this suit. Because Ronald fails to show his diligence as to Louise, he cannot add her to his complaint after the deadline has passed.

As to adding the Health Plan, Ronald does not claim that he was diligent, but instead feebly attempts to blame Auburn and the Disability Plan for his own failure. He contends that "Defendant[s] never indicated that Plaintiff was not entitled to medical benefits because he sued the wrong party" (Mem. in Supp. of Mot. to Amend at 1), but does not explain why Defendants are obligated to advise him on which parties to sue.[4] He also implies that Defendants somehow misled him into believing that the Disability Plan provides health benefits. (*See id.*) Yet, he provides no citations to the record to support this brash assertion (*see id.*), and he need only read the plan (something the Court undertook to do) to see that it makes no mention of health benefits (*see* Third Wenino Aff., Ex. A). These conclusory and unsupported accusations fall far short of demonstrating good cause for Ronald's failure to add the Health Plan before the deadline, particularly since they are unsupported by any citation to legal authority – not even the pertinent Rule. *See U.S. v. Giovannetti*, 919 F.2d 1223, 1230 (7th Cir. 1990) ("A litigant who fails to press a point by supporting it with *pertinent* authority . . . forfeits the point . . . . We will not do his research for him." (internal citations omitted)).

In summary, because Ronald fails to demonstrate good cause for adding either Louise or

[4]As Defendants aptly note, Ronald seems to think "that [Defendants] had an affirmative obligation to tell him how to litigate his own case," but "[t]hat is not how the adversarial system works." (Resp. to Pl.'s Mot. to Amend at 4.)

the Health Plan more than a year after the deadline, his motion to amend is denied.[5]

B. Ronald's Motion for Summary Judgment

1. Standard of Review

Summary judgment may be granted only if there are no disputed genuine issues of material fact. *Payne v. Pauley*, 337 F.3d 767, 770 (7th Cir. 2003). When ruling on a motion for summary judgment, a court "may not make credibility determinations, weigh the evidence, or decide which inferences to draw from the facts; these are jobs for a factfinder." *Id.* The only task in ruling on a motion for summary judgment is "to decide, based on the evidence of record, whether there is any material dispute of fact that requires a trial." *Waldridge v. Am. Hoechst Corp.*, 24 F.3d 918, 920 (7th Cir. 1994). If the evidence is such that a reasonable factfinder could return a verdict in favor of the nonmoving party, summary judgment may not be granted. *Payne*, 337 F.3d at 770. A court must construe the record in the light most favorable to the nonmoving party and avoid "the temptation to decide which party's version of the facts is more likely

[5]Even assuming *arguendo* that Ronald demonstrated good cause for extending the deadline to add the Health Plan under Rule 16, he still could not meet Rule 15's standard for amending his complaint, because adding the Health Plan would be futile. *Ind. Funeral Dir. Ins. Trust*, 347 F.3d at 655 (holding that leave to amend complaint can be denied for futility). While it is generally true that "ERISA permits suits to recover benefits only against the plan as an entity," *Riordan v. Commonwealth Edison Co.*, 128 F.3d 549, 551 (7th Cir. 1997), the Seventh Circuit has allowed claims to proceed against the parent company as the only named defendant where the company and the plan were "closely intertwined," *Mein v. Carus Corp.*, 241 F.3d 581, 585 (7th Cir. 2001); *Neuma, Inc. v. AMP, Inc.*, 259 F.3d 864, 872 n.4 (7th Cir. 2001); *Riordan*, 128 F.3d at 551. An unfunded plan, such as the Health Plan here, is obviously "closely intertwined" with the company which sponsors it, especially since it "has no funds with which to satisfy a judgment" and therefore must rely on the company's assets. *Slaughter v. AT&T Info. Sys., Inc.*, 905 F.2d 92, 94 (5th Cir. 1990); *Musmeci v. Schwegmann Giant Super Mkts.*, 159 F. Supp. 2d 329, 352 (E.D. La. 2001) (holding that an unfunded plan "is merely a nominal defendant with the true party in interest being the employer"); *see Harrison v. Digital Health Plan*, 183 F.3d 1235, 1241 (11th Cir. 1999) ("A plaintiff's action to enforce the medical benefits provision of a self-funded ERISA plan is essentially a lawsuit by an employee against her employer for breach of contract"). In short, adding the Health Plan as a defendant would have no material effect on this case; since the Health Plan "has no existence apart from" Auburn and would be "merely a nominal defendant," *Slaughter*, 905 F.2d at 94, Ronald can proceed against Auburn alone, *see Mein*, 241 F.3d at 585; *Neuma*, 259 F.3d at 872 n.4; *Riordan*, 128 F.3d at 551. Accordingly, his request to add the Health Plan is futile and must be denied. *See Garcia v. City of Chicago*, 24 F.3d 966, 970 (7th Cir. 1994) (denying motion to amend complaint as futile where the proposed amended complaint stated no new claims).

true[,]" as "summary judgment cannot be used to resolve swearing contests between litigants." *Id.* However, "a party opposing summary judgment may not rest on the pleadings, but must affirmatively demonstrate that there is a genuine issue of material fact for trial." *Id.* at 771.

2. Ronald's Claims

To say that Ronald's motion for summary judgment is cursory is a bit of an understatement. His summary judgment brief is barely two pages long, contains only a laundry list of the remedies to which he believes he is entitled, and is devoid of any case citations. (*See* Mem. in Supp. of Pl.'s Mot. for Summ. J. Regarding Damages.) Moreover, he did not file a reply brief, choosing instead to file a doomed motion to amend, discussed *supra*. Nevertheless, he demands the following relief:

> (i) reinstatement to the [Disability Plan] as of the date that Defendant arbitrarily and capriciously made the decision to exclude him from the Plan, June 21, 2001 . . . ;
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> (ii) reinstatement of Louis [*sic*] Osbun, spouse of Ronald J. Osbun at the time he was excluded of [*sic*] the Plan . . . ;
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> (iii) their monthly disability payment benefits in the [total] amount of $13,804.00, based upon $406.00 per month for 34 months . . . ;
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> (iv) total outstanding medical bills personally incurred and/or still owed by Ronald Osbun in the amount of $9,542.83;
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> (v) that Medicare be paid $8,372.69 to cover its "lien," i.e., the amount that Medicare paid for Ronald Osbun's medical care and treatment since June 21, 2001[,] to the present day;
>
> (vi) that [*sic*] Medicare premiums Plaintiff had to pay to obtain replacement medical care coverage ($1,974.60); and
>
> (vii) that Plaintiff has incurred $27.15 in out of pocket expenses to Dr. Tarlton and Indiana Surgical Specialists.

(*Id.* at 2.) Unfortunately, Ronald does not bother to specify *which* defendant is liable for *which*

of these remedies or why. Accordingly, the only way to resolve his claims is to take each defendant separately and determine for which, if any, of Ronald's claimed remedies it is liable. We begin with the Disability Plan.

3. The Disability Plan Must Reinstate Ronald's Pension and Reimburse His Missed Pension Payments

The Disability Plan concedes that, due to this Court's previous determination that Ronald's termination from the plan was arbitrary and capricious, it is liable for the first and third remedies Ronald demands. (*See* Def.'s Resp. to Pl.'s Mot. for Summ. J. at 3.) That is, it must reinstate Ronald to the plan retroactive to June 21, 2001, and it must reimburse the disability benefits which Ronald should have received between July 2001 and the present (August 2004). The parties agree that Ronald's monthly benefit was $406, and he is therefore entitled to a judgment of $15,428 ($406 x 38 months).[6]

Ronald's second claimed remedy, "reinstatement of [Louise]," cannot be awarded against the Disability Plan for two reasons. First, there is no evidence that Louise was ever a participant in the Disability Plan, so she can hardly be "reinstated" to it.[7] Second, Ronald fails to explain how this Court can award *any* remedies to Louise, given that she is not a party to this suit. *See U.S. v. Nat'l Treasury Employees Union*, 513 U.S. 454, 478 (1995) (expressing reluctance to provide relief to nonparties).

The rest of Ronald's claimed remedies, numbered (iv) through (vii), are all related to

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[6]As this Court previously decided, the proper remedy here is reinstatement of benefits, rather than remand to the plan administrator. *Osbun*, 293 F. Supp. 2d at 872 n.17; *see Hackett v. Xerox Corp. Long-Term Disability Income Plan*, 315 F.3d 771, 776 (7th Cir. 2003).

[7]One assumes that Ronald speaks of the Health Plan when he asks that Louise be "reinstated," but again, he does not bother to specify. (*See* Mem. in Supp. of Pl.'s Mot. for Summ. J. Regarding Damages at 2.)

medical expenses Ronald incurred since he was terminated from the plan. However, the Disability Plan does not provide any medical benefits. (Third Wenino Aff. ¶ 3 and Ex. A.) Ronald therefore runs afoul of the settled proposition that extracontractual damages are not recoverable in an ERISA § 502(a)(1)(B) suit.[8] *Harsch v. Eisenberg*, 956 F.2d 651, 655-56 (7th Cir. 1992); *Medina v. Anthem Life Ins. Co.*, 983 F.2d 29, 32 (5th Cir. 1993). Ronald simply cannot recover medical benefits from a plan that never promised to provide them.

To summarize, the Court finds that the Disability Plan is liable for Ronald's claimed remedies (i) and (iii); that is, Ronald must be reinstated to the Disability Plan retroactive to June 21, 2001, and is entitled to recover his missed disability benefits via a judgment of $15,428. The Court also finds that, as a matter of law, the Disability Plan cannot be liable for any of Ronald's other claimed remedies.

4. Ronald's Claims Against Auburn Must Be Stayed Due To Its Pending Bankruptcy Petition

Auburn filed a Chapter 11 bankruptcy petition on February 8, 2004. Pursuant to 11 U.S.C. § 362(a)(1), that petition operates as an automatic stay of all judicial proceedings against Auburn. Accordingly, the Court cannot address the question whether Auburn is liable for any of Ronald's claimed remedies, but instead must stay what remains of this case.[9]

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[8]Ronald has never specified which section(s) of ERISA provide the basis for his claims, but this Court previously ruled that his claims arise under ERISA § 502(a)(1)(B) (29 U.S.C. § 1132(a)(1)(B)) only. *Osbun*, 293 F. Supp. 2d at 868 n.9.

[9]Although the Court expresses no opinion on the merits of Ronald's claims against Auburn, the remedies assessed against the Disability Plan may have some indirect effect on them. For example, this Order directs that Ronald be retroactively reinstated to the Disability Plan, and participation in the Disability Plan automatically makes one eligible for benefits under the Health Plan (Third Wenino Aff. ¶ 4 and Ex. A at 3.1). Thus, perhaps the Health Plan will treat Ronald as retroactively reinstated into the Health Plan as well. If Ronald has incurred expenses since June 21, 2001, which are covered by the Health Plan, he could then submit them to the Health Plan and be reimbursed. In other words, this Order may indirectly create new administrative remedies for Ronald to exhaust before further pursuing Auburn in this Court.

IV. CONCLUSION

For the reasons given above, Ronald's motion to amend is DENIED.

Ronald's motion for summary judgment is GRANTED in part. The Disability Plan is hereby ORDERED to reinstate Ronald, retroactive to June 21, 2001. Further, the Clerk is hereby ORDERED to enter a final judgment[10] in favor of Ronald and against the Disability Plan in the amount of $15,428 and ordering the Disability Plan to reinstate Ronald, retroactive to June 21, 2001. However, to the extent that Ronald claims entitlement to any other remedies against the Disability Plan, his motion for summary judgment is DENIED with prejudice, and the Court finds as a matter of law that he is not entitled to any other relief from the Disability Plan.[11]

To the extent that Ronald's motion for summary judgment asserts claims against Auburn, it is DENIED without prejudice. The remainder of this case, which consists only of Ronald's claims against Auburn, is hereby STAYED. Because this action is stayed pending a further determination by the Bankruptcy Court, the Clerk is directed to administratively remove this

[10]Since this Order resolves all issues of liability and damages as to the Disability Plan, the Court finds that there is no just reason to delay the entry of a final judgment against it. *See* Fed. R. Civ. P. 54(b).

[11]The Court is mindful that the Disability Plan has not formally moved for summary judgment on any of Ronald's claims and that a *sua sponte* grant of summary judgment is a "hazardous procedure which warrants special caution." *Jones v. Union Pacific R.R. Co.*, 302 F.3d 735, 740 (7th Cir. 2002) (internal quote marks omitted). However, summary judgment can be entered *sua sponte* where the losing party is given notice and an opportunity to come forward with its evidence. *Id.* In this case, the Court and the parties agreed at a previous hearing (*see* Docket # 43) that all remaining issues could be resolved via summary judgment. Moreover, Ronald's motion for summary judgment encompassed all remaining issues in the case, and he presumably marshaled all the favorable facts and arguments at hand to support that motion. Accordingly, the Court's decision that, as a matter of law, the Disability Plan is not liable for any remedies other than those granted *supra* "[does] not deprive the plaintiff of any procedural safeguards" and is therefore appropriate. *Jones*, 302 F.3d at 740.

case from the active docket. Counsel are to inform the Court when the action may proceed.

Enter for this 11th day of August, 2004.

/S/ Roger B. Cosbey
Roger B. Cosbey,
United States Magistrate Judge